**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION NO. 69 OF 2005**

**IN**

**NOTICE OF MOTION NO. 2913 OF 2004**

**IN**

**SUIT NO. 2887 OF 2004**

**MOTIRAM BHAGWAN GHARBUDE ... PETITIONER**

**(Orig. Plaintiff**

**Versus**

**ASHOK VITHAL SONAWANE & Anr. ... RESPONDENGTS**

**Contemnor.**

**Mr. Vijay Pradhan, Senior Advocate, with**

**Ms. Neeta Solanki i/b. Kiran Jain & Co. for petitioner.**

**Mr. S.S.Deshmukh for Respondent.**

**CORAM: S.K.SHAH,J.**

**DATE : 19th August,2006.**

**P.C.**

**1. Heard Counsel on both sides.**

2. This Contempt Petition is taken out alleging that the Respondent No.1 has committed contempt of the order passed by this Court on 12.10.2004 in Notice of Motion No.2913 of 2004. The order is as follows :-

> "....Therefore, there will be ad interim order in terms of prayer clause (a) of the motion against the defendant until further orders. The defendant, his servants, agents are, therefore, restrained from repeating in publishing, circulating any articles in the newspaper which are, in any manner, defaming the plaintiff."

3. By Order dated 1.9.2005, the Notice of Motion No.2913 of 2004 was disposed of by the following order :-

> "The learned Counsel appearing for defendant states that the defendant has not published the pamphlets which are subject matter of the suit and that he does not have any intention either in self or others to do the same in future. Statement is accepted. In view of this statement, no orders are necessary.

**Notice of Motion is disposed off."**

**It is clear that the Notice of Motion was disposed of which has the effect of vacating the ad-interim relief that was granted on 12.10.2004.**

**4. It is alleged that on 24.1.2005, a pamphlet which is at Exhibit"E" to the Petition, was published which, according to the learned Counsel for the petitioner, is in violation of the order dated 12.10.2004 when the said order was in force. It is alleged that the Respondent NO.1 is very much associated with the 12 associations mentioned in the pamphlet and, therefore, it is alleged that though not by the Respondent No.1 personally, but through his agent and associates the aforesaid pamphlet was published for defaming the petitioner and, therefore, the Respondent No.1 has committed contempt of the order.**

**5. An affidavit-in-reply has been filed by the Respondent No.1 clearly denying that this pamphlet was isued by him or that in any way he is associated with the 12 associations mentioned in the pamphlet.**

**6. There is no evidence to indicate that the Respondent No.1 got this pamphlet issued and circulated or is concerned with any of the 12**

associations mentioned in the pamphlet. Reading of the pamphlet itself shows that the publisher is one Lahuji Ustad Salve Rashtriya Smarak Samiti which has office in Bandra (East), Mumbai. The pamphlet further clarifies that against various corrupt officers including the petitioner that Shri Ganesh Vishwanath Khaire would sit for hunger strike on 26th January,2005 at 10.00 a.m. As a matter of fact, the said Shri Ganesh V. Khaire sat for fast unto death. This itself shows that it was Ganesh V. Khaire who was behind publishing and circulating the pamphlet to publicize his own sitting for fast unto death against the corrupt officers named in the complaint. Therefore, prima facie, this would show that it was the said Ganesh V. Khaire who had published and circulated this pamphlet. As indicated above, there is nothing to indicate that the Respondent No.1 was in any way connected with any of the 12 associations or even the publisher or even Ganesh V. Khaire. Therefore, the publication of this pamphlet was, prima facie, not proved to be by the respondent.

7. There is reference to one criminal complaint filed by the Respondent No.1 against the petitioner in the Court of Chief Metropolitan Magistrate, Ahmednagar, for the alleged offence under Sections 499 and 500 of I.P.C. Therefore, when legal action

having been taken by the Respondent No.1 against the Petitioner, this aspect also cannot be relevant for admitting this Petition.

8. There is reference to the Writ Petition filed in the High Court Bench at Aurangabad. However, that was filed in the year 2006 which was subsequent to the disposal of the Notice of Motion by an order dated 1st September, 2005. Therefore, this cannot be taken into consideration

9. Under the circumstances, I do not find any merit in this Contempt Petition. The Contempt Petition is, therefore, dismissed.

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(S.K.SHAH,J.)